IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6292 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKBHAI NANDLAL PAREKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6292 of 2003

MR DM THAKKAR for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner

has challenged the order of detention dated 23-4-2003 passed by the District Magistrate, Bhavnagar, in exercise of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the respective parties. I have also perused the material on record. Affidavits filed on behalf of the respondent Nos.1 and 4 are ordered to be taken on record.

3. Learned advocate for the petitioner has mainly concentrated his arguments on non-filing of affidavit by the detaining authority justifying the action taken by it while passing the order of detention. According to him, the detenu has submitted a representation to the detaining authority on 1-5-2003 through advocate and which was received by the authority on 7-5-2003. It is further submitted that said representation was received by the authority on 12-5-2003, it was decided on 15-5-2003 and communicated to the detenu on 17-5-2003. It is further submitted that no affidavit has been filed by the detaining authority dealing with the contentions raised by the petitioner in the petition and by justifying its action. He has relied upon the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed by the detaining authority justifying the action taken by it in passing the impugned order, in view of the aforesaid judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 23-4-2003 passed against the detenu is

hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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